HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 449 of 2005

1. Pheru Singh S/o Chota
2. Mahesh S/o Vidhya Ram
3. Rajendra S/o Vidya Ram
4. Umesh S/o Vidya Ram
5. Bhajju S/o Amarnath
6. Prakash S/o Amarnath
7. Pappu @ Parthu S/o Amarnath
8. Chedo S/o Amarnath
9. Arjun S/o Chota
10. Ram Prasad S/o Chota
    All R/o village Kutra
    P.S. Khatima
    District U.S. Nagar
11. Prahlad S/o Nandan Singh
    R/o Ward No.7, Kasba
    P.S. Khatima
    District U.S. Nagar

.....Applicants

Versus

1. State of Uttaranchal
   Through Secretary Home
   Secretariat Complex, Dehradun
2. Ganesh Singh Rana
   S/o Madan Singh Rana
   R/o village Kutra
   P.S. Khatima
   District U.S. Nagar

.....Respondents

Hon'ble J.C.S. Rawat, J.

Heard Sri Tumul Nailwal learned counsel for the applicants and Sri Nandan Arya learned A.G.A.

2. The petition under section 482 Cr.P.C. has been filed for quashing the chargesheet dated 30.5.2005 under section 379, 447, 379, 447, 506, 504, I.P.C. in case crime No. 938/2004 P.S. Khatima District U.S. Nagar and summoning order dated 20.6.2005 as well as the entire proceedings.

3. The factual position in a nutshell is that on 6.5.2005 the respondent No.2 lodged an FIR in the

police station Khatima against the applicants under sections 379, 504, 506 I.P.C. with the allegations that in the night of 5.5.2005 the applicants have stolen the boundary poles and wire from the field of complainant. On the basis of said FIR, the chargesheet was submitted against the accused persons after taking the investigation. Thereafter, the Magistrate took cognizance against the applicants vide order dated 20.6.2005. Feeling aggrieved by the said order, the applicants preferred the present petition.

4. The learned counsel for the applicants contended that the land in dispute is in possession of the applicants and no such incident has been occurred as alleged in the FIR. The learned counsel for the applicants further contended that the land in dispute is in the name of the applicants and it has been admitted in the subsequent FIR that they were ploughing the field. The learned A.G.A. refuted the contention and contended that documents annexed with this petition cannot be appreciated by this Court. The matter regarding the ownership of the disputed land can only be ascertained by the trial court. This fact has to be decided during the trial. This court cannot evaluate the disputed facts of the case. This Court cannot decide as to whether the evidence is reliable or not. It has been held by the Hon'ble Apex Court in **M. Naryandas Vs. State of Karnataka 2004 Cri. L.J. p/822** that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or

inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprise. It has also been held in **State of Karnataka Vs. M. Devendrappa & another 2002(2) SBR p/151** that while exercising jurisdiction under section 482 Cr.P.C., the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court.

5. It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482Cr.P.C., it is not possible for this Court to act as it it is a trial court. **{State of M.P. Vs. Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}.**

6. In view of the above, the petition lacks merit and is dismissed.

(J.C.S. Rawat, J.)

Dated: 20.07.2005
LSR